

28 August 1952

MEMORANDUM FOR THE RECORD

SUBJECT: Conference at the Department of Justice

PRESENT: For the Department: Mr. Murray, Chief, Criminal Division
Mr. Whearty, Deputy Chief of Criminal Division
Mr. Lowther, Attorney in Charge of the [REDACTED]
For CIA: Mr. Dulles, Deputy Director of Central Intelligence
Mr. Becker, Deputy Director/Intelligence

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1. Mr. Murray inquired of Mr. Lowther as to the nature of the testimony he desired [REDACTED]. Mr. Lowther explained that he had a problem of establishing the jurisdiction of the Agency to which the report had been given, both under Count I and Count II. Under Count I, he had to establish the jurisdiction of CIA. This had been held to be a matter of law, but he also desired to make proof of the fact. On this point, he desired to call the CIA representatives [REDACTED] and ask them whether or not it was a part of their duty to collect foreign intelligence information and whether or not they were performing this duty when receiving the report [REDACTED]. In the alternative, Lowther could establish these facts by interrogating a representative of CIA's Washington Office to the same effect.

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2. Under Count II, Lowther indicated that the FBI has statutory authority, of the broadest kind, to investigate whether or not a crime under U. S. law has been committed. Under this Count he wanted to show that the crime being investigated was, first, the giving of a false report to CIA (under section 1001 of Title 18) and, second, leaving the U. S. by Lattimore in time of emergency without a valid passport (this being made a criminal act by another statutory section).

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3. Mr. Dulles and Mr. Becker indicated that, aside from the provisions of the Security Act of 1947, the detailed jurisdiction of CIA to collect reports of this character was founded upon National Security Counsel Intelligence Directives which were classified "Secret."

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4. It was further explained that, entirely apart and aside from the classified nature of the Directives upon which CIA's jurisdiction was based, grave injury would be dealt to CIA's operations in this field by the publicizing of such activities and the appearance of CIA representatives as witnesses. In large measure, CIA's capability of collecting information from American business firms and travelers was dependent upon CIA's ability to assure its informants that such information was to be used only to protect the security interests of the U.S., and for no other purpose. CIA's informants, in general, were not lawyers and, therefore, did not clearly distinguish between the giving of false information in good faith and the wilful giving of false information. The fact that there has already appeared a certain amount of publicity respecting these CIA activities, due to leaks of information and the publicity attendant upon the Grand Jury proceedings, has made it almost a certainty that the additional and intense publicity attendant upon a trial would be contrary to the security interests of CIA and would interfere with the accomplishment of its mission. It was explained that the relatively limited examination on the part of the U. S. Attorney would undoubtedly be amplified by an examination on the part of the defense attorney.

5. The CIA representatives inquired why Mr. Lowther could not confine his case to the false report given to the FBI agent under Count II, which did not require any reference to CIA. Mr. Lowther explained that although this might be technically feasible, it would greatly reduce the impact of his case upon the jury.

6. After additional discussion along the same line, Mr. Dulles explained that CIA did not regard this case as having sufficient importance to justify the possible damage to the security interests of the U. S. inherent in the procedure proposed by the Department of Justice. So far as CIA was able to determine, [REDACTED] and no rational motive for his action had as yet been uncovered. This distinguished the case, in the view of CIA, from such cases as the Rosenberg case, cited by Mr. Whearty. STATOTHR

7. Upon being advised of CIA's position, Mr. Murray indicated that the Department might feel impelled to drop the case, although he did not state that the Department would do so. Mr. Murray indicated that the Department did not consider initiating an offer that [REDACTED] receive a suspended sentence if he pleaded guilty, although the Department would welcome an offer on his part to plead guilty. STATOTHR

8. Mr. Murray then requested if Lowther might raise a separate question relating to the [REDACTED] case and Mr. Dulles agreed that he might do so. Lowther indicated that he was interested in a meeting prior to November 16, which had been attended by [REDACTED] and others. Lowther's present information indicated that this earlier meeting had STATOTHR

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It was the position of [REDACTED] that at this earlier meeting he had urged that CIA and State Department utilize certain individuals as advisers in a psychological warfare operation. He claimed to have done this without any assurance as to the loyalty of said individuals, but rather with an indication that irrespective of their loyalty status, they were peculiarly qualified to give advice on this type of operation. Lowther hoped to establish through the testimony of the others present that [REDACTED] not only recommended the use of these individuals as advisers, but also vouched for their loyalty. In order to do this, Mr. Lowther desired to interview all of those present at this earlier meeting and to have them appear as witnesses before the grand and petit juries and at the trial. He also desired to have them testify in some detail as to the nature of the particular psychological warfare operation then under consideration.

9. Mr. Dulles was certain that [REDACTED] was no longer employed by CIA, but stated that he would have to check on the present status of [REDACTED]. As respects [REDACTED] testimony which would establish their relationship with CIA would destroy their usefulness to the Agency and this presented a serious question. Mr. Murray noted, moreover, that even if [REDACTED] were not called to testify, anyone who was asked to testify respecting the meeting in question could be compelled to identify those present at the meeting.

10. In the ensuing discussion, Mr. Dulles explained that it was the position of CIA that representatives such as [REDACTED] could be called to testify if the President determined that the over-all interest of the U.S. required the sacrifice of the security interest involved, but that CIA would be unwilling to produce such individuals for testimony in court, lacking such determination. This was entirely aside from the fact that CIA would be glad to permit representatives of the Department to interview these CIA representatives at any time. Mr. Dulles believed that, after such an interview, Mr. Lowther would agree that [REDACTED] recollections of this earlier meeting were so fuzzy as to make it unlikely he would desire them as witnesses, in any event. Mr. Dulles explained that CIA was desirous of cooperating to the fullest possible extent with the Department, but also felt impelled to raise the security considerations which were also important so long as our Government was engaged upon a secret intelligence effort.

11. Mr. Lowther indicated that his questions on this particular matter were extremely preliminary and that the Department had not determined what action it planned to take.

Loftus E. Becker

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